

The Flinn Report

Illinois

Regulation

Claire B. Eberle, Editor

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Joint Committee on Administrative Rules

Illinois General Assembly

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Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.

New Regulations

CAMPAIGN FINANCING

The STATE BOARD OF ELECTIONS adopted an amendment, effective 6/1/06, for rules titled "The Campaign Financing Act" (26 Ill Adm Code 100) concerning political committees that initially file a Statement of Non-Participation with the Board. If the committee subsequently makes an expenditure in excess of \$500 or an aggregate amount in excess of \$500 in support of or opposition to a candidate or a public policy question that will appear on the next election ballot, the committee must file a pre-election report within 5 days of making the expenditure. If such an expenditure occurs during the 5 days prior to the election, the report must be submitted within 24 hours after making the expenditure.

STATE BOARD OF ELECTIONS

The BOARD also adopted amendments for "Practice and Procedure" (26 Ill Adm Code 125), effective 6/1/06, to strike the requirement that the Board hold public hearings in at least 2 areas of the State before adopting, amending, or repealing its rules. Instead, the Board will hold a hearing if

it receives a request for one within 14 days of a rulemaking's publication in the *Illinois Register*. Other covered topics include methods of publicizing an upcoming hearing and providing the Board and JCAR with a hearing summary. A change since 1st Notice specifies that a Board hearing officer, whenever possible, shall be an attorney licensed in Illinois. Those affected by this rulemaking include not-for-profit corporations, small municipalities, and small businesses (e.g., companies that manufacture voting machines) that are affected by Board policies and regulations.

Questions/requests for copies of the 2 Board rulemakings above: Steven S. Sandvoss, St. Bd. of Elections, 1020 S. Spring St., Springfield IL 62704, 217/557-9939, e-mail: ssandvoss@elections.state.il.us

PHARMACEUTICAL ASSISTANCE

The DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES adopted amendments for "Illinois Cares Rx Program" (89 Ill Adm Code 119), "Medical Payment" (89 Ill Adm Code 140), and "Medical Assistance Programs" (89 Ill Adm Code 120), all effective 5/26/06.

(cont'd next page)

Proposed Regulations

HORSE RACING

The ILLINOIS RACING BOARD proposed an amendment for "Purse Recapture" (11 Ill Adm Code 213) to clarify how qualified licensed Illinois wagering facilities may deduct ("recapture") from purses awarded to horsemen an amount equal to 2% of the difference between a wagering facility's 1994 pari-mutuel handle on Illinois horse races and its handle on Illinois races for the later year in question. (The pool of all bets on a race is the "handle" for that race.) This rulemaking is in response to a 1st District Appellate Court opinion (No. 1-04-3280, 5/19/06) that notes an inconsistency between the Horse Racing Act and Board rules as to what constitutes a "wagering facility". The statute defines a wagering facility as a location at which a licensee may accept or receive pari-mutuel wagers (e.g., race track), explicitly distinguishing the "licensees" who use those facilities from the wagering facilities themselves. Part 213 currently identifies licensees as wagering facilities, but the proposed amendment corrects that inconsistency by referencing the wagering facility's handle rather than the licensee's handle. This is a significant distinction when calculating the amount of money, if any, that a wagering facility may "recapture" to offset some of the revenue lost due to the popularity of betting on simulcast

(cont'd page 5)

NEW REGULATIONS: Rules adopted by agencies this week.

PROPOSED REGULATIONS: Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

☞: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

QUESTIONS/COMMENTS/RULE TEXT: Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

New Regulations

Companion emergency amendments for all 3 rulemakings became effective 1/1/06. The Part 119 amendments implement the “Illinois Cares Rx Program” to provide prescription drug assistance to disabled Illinois residents age 65 or older who meet certain specified income criteria per household size (e.g., less than \$21,218/yr. income for a one-person household). Except for individuals choosing “Illinois Cares Rx Rebate”, each program participant must also enroll in Medicare Part D if he or she is eligible for it. Eligibility for “Illinois Cares Rx Plus” additionally requires the participant to be a U.S. citizen or an eligible non-citizen under rules at 89 Ill Adm Code 120. Individuals who were eligible for the SeniorCare program on 12/31/05 are automatically eligible for, and enrolled in, the “Plus” program. Those eligible for Circuit Breaker Pharmaceutical Assistance on 12/31/05 are automatically eligible for, and enrolled in, the basic program. Covered topics include application procedures, enrollment periods, appeal rights, coordination with Medicare coverage, and covered services under the basic and plus plans. Lists of covered prescription drugs are included, also. A change since 1st Notice for Part 119 adds respiratory enzymes (for lung disease and smoking-related illness treatment) and adrenocortical steroids (for multiple sclerosis treatment) to the list of covered drugs. The Part 120 and 140 amendments repeal rules for the SeniorCare pharmaceutical benefits program, which has been replaced by Part 119 above. Those affected by these rulemakings include pharmacies and Medicaid-funded hospitals.

HFS repealed rules titled “Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act” (89 Ill Adm Code 126), effective 5/26/06. A companion emergency repealer became effective 1/1/06. This pharmaceutical assistance program was originally administered by the Department of Revenue and

then transferred to the Department of Public Aid (now HFS) by executive order on 7/1/04. This program has been replaced by the Illinois Cares Rx Program in Part 119 and is, therefore, obsolete. (Please see the Part 119 rule summary above.)

HFS also adopted a new Part 126 titled “The Illinois Prescription Drug Discount Program” (89 Ill Adm Code 126), effective 5/26/06. A companion emergency rulemaking became effective 1/1/06. The rulemaking implements Public Act 94-86, which establishes the “Illinois Rx Buying Club” to negotiate prescription drug purchases from drug manufacturers at discounted prices. Rebates may additionally lower drug prices. Illinois residents with a household income equal to or less than 300% of the federal poverty level may enroll in the program by paying a \$10 fee. (The HFS director may, in his or her discretion, reduce the annual fee based upon actual administrative costs.) Participating pharmacies agree to charge the program enrollees no more than the negotiated drug price for their prescriptions. HFS may act as program administrator or contract with an outside vendor or another State agency to operate the program. Changes since 1st Notice specify the fee amount as \$10, delete authorization for the program administrator to deduct an administrative fee from the enrollment fees, and delete a statement that enrollment forms may be amended from time to time without further rulemaking. Also, the enrollment form requires the applicant’s name, address, telephone number, and income information. Those affected by this rulemaking include pharmacies.

HOSPITALS

HFS adopted amendments for “Hospital Services” (89 Ill Adm Code 148), effective 5/26/06, to increase certain hospital outpatient and clinic services reimbursement rates. A companion emergency rulemaking became effective

1/9/06. The Department states that it restored payment rates (reduced for fiscal year 2005) in response to the anticipated additional cost of compliance with the federal Health Insurance Portability and Accountability Act (HIPAA). All hospitals not owned by Cook County will be affected by this rulemaking.

LONG-TERM CARE

HFS adopted an amendment for “Long Term Care Reimbursement Changes” (89 Ill Adm Code 153), effective 5/26/06, to implement Public Act 94-697. A companion emergency rulemaking became effective 1/1/06. The daily rates paid to providers of services to developmentally disabled persons by intermediate care facilities (ICF/MR) and skilled long-term care facilities for persons under age 22 (SNF/Ped) are increased by 3%, effective 1/1/06. (The rate as originally proposed was 2.69%.) Developmental training (DT) rates for the same client groups also are increased by 3%, effective 1/1/06. Those affected by this rulemaking include ICF/MR and SNF/Ped facilities and DT agencies.

FAMILYCARE PROGRAM

HFS also adopted amendments for “Children’s Health Insurance Program” (89 Ill Adm Code 125), effective 5/26/06, to expand the provisions of the KidCare program to include qualifying adults in a new program called FamilyCare. To be eligible, the adult must be at least 19 years old, be a parent or caretaker relative of a child receiving KidCare benefits, and have an income up to 185% of the federal poverty level. The spouse of an eligible adult qualifies if they reside together. The rulemaking also expands the list of qualifying categories for noncitizens and includes reasons why an eligible adult may become ineligible. A website address for applying for family benefits is included, eligible adults are required to promptly report any change in financial information,

New Regulations

procedures for adding children to the program are updated, and a new section establishes guidelines for adding eligible adults to the program and making changes in participation. New levels are added to the current schedule for monthly premiums to include families of 4 covered individuals (\$35) and 5 or more covered individuals (\$40). The remaining changes reflect the expansion of the KidCare program to encompass the new FamilyCare program.

Questions/requests for copies of the 8 HFS rulemakings above: Tamara Tanzillo Hoffman, DHFS, 201 S. Grand Ave. E., 3rd Fl., Springfield IL 62763-0002, 217/557-7157.

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Questions/requests for copies: Valerie A. Puccini, DOL, 160 N. LaSalle St., C-1300, Chicago IL 60601, 312/793-7838, Fax 312/793-5257.

☛ **GROUNDWATER "SETBACKS"**

The POLLUTION CONTROL BOARD adopted a new Part titled "Maximum Setback Zones" (35 Ill Adm Code 618), effective 5/23/06, to establish in accordance with the Illinois Environmental Protection Act an expanded "setback" zone of up to 1,000 ft. to provide additional protection for the Marquette Heights (Tazewell County) community water supply (CWS). (A setback zone is a geographic area containing a potable water supply well or a potential source or potential route having a continuous boundary and within which certain prohibitions or regulations are applicable in order to protect groundwaters.) In this case, the setback zone restricts land use near the CWS wells, providing a buffer between the wells and potential sources or routes of contamination. The rulemaking also includes definitions and a map indicating the boundaries of the Marquette Heights maximum setback zone. Small businesses that own or operate, or wish to own or operate, enterprises that are prohibited by this Part are affected by this rulemaking.

Questions/requests for copies: Richard McGill, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-6983, e-mail: mcgillr@ipcb.state.il.us. Please reference docket R05-09.

HORSE RACING

The ILLINOIS RACING BOARD adopted amendments for "Trifecta" (11 Ill Adm Code 306), "Superfecta" (11 Ill Adm Code 311), and "General Racing and Track Rules" (11 Ill Adm Code 1314), all effective 6/1/06. Amendments to Parts 306 and 311 replace separate requirements for en-

tries specific to harness racing or thoroughbred racing with one set of requirements governing both. Stewards (previously, the IRB executive director or the State director of mutuels) must approve more than 2 entries in one race. For stakes races with a minimum purse of \$20,000, either coupled or uncoupled entries shall be allowed, and there shall be no restrictions on minimum betting interests. For stakes races with a minimum purse of \$200,000, common owner entries (either coupled or uncoupled) shall be allowed, and there shall be no restrictions on minimum betting interests. Amendments to Part 1314 prohibit additional harness races on a racing date without the written approval of the executive director (previously, IRB secretary) and strike the requirement that, in the event that racing pursuant to the hours prescribed by the licensee is conducted at night or twilight, the wagering program must be completed no later than midnight. Additional amendments (1) replace the prohibition against use of photo finish equipment unless a spinner or target also is used with a requirement that use of such equipment be approved by the stewards and (2) require the association steward, rather than the presiding judge, to join the State steward in reviewing all photo finishes in order to confirm or correct the placing judges' decision before a race is declared official.

Questions/requests for copies: Mickey Ezzo, IRB, 100 W. Randolph, Ste. 7-701, Chicago IL 60601, 312/814-5017.

☛ **TAXES**

The DEPARTMENT OF REVENUE adopted an amendment for "Income Tax" (86 Ill Adm Code 100), effective 5/23/06, to implement Public Act 92-846, which permits taxpayers to treat all income except employee compensation as business income for the purpose of allocating and apportioning income to the State of Illinois for each taxable year beginning on or

☛ **LABOR HEARINGS**

The DEPARTMENT OF LABOR adopted amendments for "Rules of Procedure in Administrative Hearings" (56 Ill Adm Code 120), effective 5/24/06. The rulemaking adds new regulations concerning referrals to the Attorney General for enforcement, finality of settlement agreements, and the fee charged by DOL to file the administrative record in court for an appeal. Other covered topics include use of the Illinois Rules of Evidence in DOL hearings, emergency motions, copying fees, filing and notice procedures, prehearing conference and deposition transcripts, and priority of hearings under the Child Labor Law to all other hearings. Changes since 1st Notice include retaining rather than repealing 2 sections of rule text concerning taking official notice of material facts not appearing in evidence and questioning of hostile or adverse witnesses. Also, a proposed \$500 fee charged by DOL to file the administrative record in court for an appeal was changed to a charge equal to the actual cost to the Department of preparing and filing the record. Those affected by this rulemaking include parties subject to DOL administrative proceedings, including contractors and subcontractors who perform pub-

New Regulations

after 1/1/03. The ramifications for a partnership, estate, trust, subchapter S corporation, or a combined group of corporations filing a combined return are explained. Those affected by this rulemaking include small businesses and other entities that elect to treat all income except employee compensation as business income. Municipalities and not-for-profit corporations are not affected.

DOR also adopted an amendment for "Uniform Penalty and Interest Act" (86 Ill Adm Code 700), effective 5/23/06, to specify the order in which a taxpayer's overpayment of taxes (including interest) will be applied to his or her other outstanding tax liabilities, if any. The application of the overpayment to a tax liability will be made in the following order: the next oldest tax liability under the Act to which the overpayment applied, the oldest tax liability under any additional Act administered by DOR, any existing request to withhold a refund in order to collect certified past due child support, any existing request to withhold a refund in order to collect debt owed to the State, any existing request to withhold a refund in order to collect any tax liability owed to the federal government, any existing request to withhold a refund in order to collect tax liability owed to another state, and any existing request to withhold a refund in order to collect past due court fees. Any

small business overpaying a tax and having outstanding tax or other liabilities listed above will be affected.

Questions/requests for copies of the 2 DOR rulemakings above: Paul Caselton, DOR 101 W. Jefferson, Springfield IL 62794, 217/782-7055.

LIBRARY GRANTS

The ILLINOIS STATE LIBRARY of the SECRETARY OF STATE adopted amendments to "Public Library Construction Grants" (23 Ill Adm Code 3060), effective 5/25/06. The amendments allow grant funds to be used for security systems, increase the income element in the definition of "public libraries with limited public funds" from \$10 income per capita to \$12, and extend funding priorities for accessibility projects and mini-grants of the last several years through fiscal year 2007. Maximum grant amounts are lowered from \$250,000 to \$125,000. Existing rule requiring State Library approval for change orders of more than \$10,000 is expanded to state all change orders shall be subject to the Illinois Public Works Contract Change Order Act enacted in 2004. Also, the State Library must be notified of and approve the modification of any public areas of the grantee library from the proposed original plans of the approved grant application. Those affected by this rulemaking include public libraries that apply for construction grants.

Questions/requests for copies: Joseph Natale, Illinois State Library, Gwendolyn Brooks Bldg., 300 S. 2nd St., Springfield IL 62701-1796, 217/558-4185, e-mail: jnatale@ilsos.net

STATE EMPLOYEES

The Department of Central Management Services adopted amendments to "Pay Plan" (80 Ill Adm Code 310) by peremptory rulemaking, effective 6/1/06, to reflect a Memorandum of Understanding (MOU), signed 5/3/06, between the State and the American Federation of State, County and Municipal Employees (AFSCME). The Civil Service Commission approved the MOU on 5/18/06. The MOU creates the state mine inspector job title, which is assigned to bargaining unit RC-062 at a salary range of \$3476-\$5183 per month. The MOU also removes the job title of mine rescue station supervisor from the list of employee positions that are compensated under the merit compensation system rather than through collective bargaining agreements. (Most mine rescue station supervisors will become state mine inspectors under this rulemaking.) The Department of Natural Resources, Division of Mines and Minerals, is affected by this peremptory rulemaking.

Questions/requests for copies: Jason Doggett, DCMS, 504 Stratton Bldg., Springfield IL 62706, 217/782-7964, Fax 217/524-4570.

Proposed Regulations

ances that are run in other states but broadcast simultaneously at the Illinois wagering facility.

Questions/requests for copies/comments until 7/24/06: Mickey Ezzo at the IRB address and telephone number above.

DHS RESIDENTIAL SCHOOLS

The DEPARTMENT OF HUMAN SERVICES proposed the repeal of 2 Sections within its rules titled "Advisory Councils" (89 Ill Adm Code 515) that pertain to "consumer advisory councils" and "facility advisory councils". DHS also proposed an amendment to its rules titled "Role of Residential Educational Facilities Operated by the Illinois Department of Human Services" (89 Ill Adm Code 750) to add

regulations governing "residential school advisory councils". Consumer advisory councils, which provided disabled individuals for whom DHS' Division of Rehabilitation Services provides services an opportunity to participate in policy formulation and program planning relevant to their needs, have not existed for several years, and, therefore, the rules are obsolete. Facility advisory councils, as described in Part 515 and simultaneously repealed, are being added to Part 750, and their name is changed to residential school advisory councils. Residential school advisory councils retain the same functions as facility advisory councils. The only difference, other than name, is the composition of the council's membership: the membership of a residential school advisory council is capped at 16

individuals, including a minimum of 4 specified ex-officio members and remaining elected representation as outlined in each residential advisory council's bylaws or constitution. The residential educational facilities operated by DHS under Part 750 (Illinois School for the Deaf (Jacksonville), Illinois School for the Visually Impaired (Jacksonville), and Illinois Center for Rehabilitation and Education-Roosevelt (Chicago)) will have residential school advisory councils.

Questions/requests for copies/comments concerning the 2 DHS rulemakings until 7/24/06: Tracie Drew, DHS, 100 S. Grand Ave. E., 3rd Fl., Springfield IL 62762, 217/785-9772.

Second Notices

The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's July 11, 2006 meeting in Chicago.

DEPARTMENT OF TRANSPORTATION

"Control of Outdoor Advertising Adjacent to Primary and Interstate Highways" (92 Ill Adm Code 522) proposed 4/7/06 (30 Ill Reg 6125)

DEPARTMENT OF REVENUE

"Income Tax" (86 Ill Adm Code 100) proposed 4/14/06 (30 Ill Reg 6303)

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

"Respiratory Care Practice Act" (68 Ill Adm Code 1456) proposed 4/7/06 (30 Ill Reg 6059)

ENVIRONMENTAL PROTECTION AGENCY

"Procedures for Issuing Loans From the Water Pollution Control Revolving Fund" (35 Ill Adm Code 365) proposed 2/17/06 (30 Ill Reg 2002)

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**Vicki Thomas
Executive Director**

JCAR 2005 ANNUAL REPORT

The Joint Committee on Administrative Rules' 2005 annual report is now available. The report summarizes agency rulemaking, JCAR actions, and public act reviews in addition to legislative and judicial actions that affected rulemaking.

Copies of the 2005 Annual Report of the Joint Committee on Administrative Rules are available to the public. The volume may be ordered for \$2.61 (\$4.20 with postage included) by sending a check to JCAR at the address listed on the front of this newsletter. It is also available online at our website at www.ilga.gov/commission/jcar